IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
Writ Petition No.1858 of 2005

Bagu Raghu Deshmukh & ors. Petitioners
Vs.
The State of Maharashtra & ors. Respondents

Mr.P.S.Dani for petitioners.
Ms.M.P.Thakur, AGP for resp.nos.1 to 3 & 6.
Mr.R.C.Master with Mr.P.S.Jetly for resp.nos.4 & 5.

CORAM: B.H.MARLAPALLE & NARESH H.PATIL,JJ.

October 04, 2006.

P.C.

1. Heard Mr.Dani, the learned counsel for the petitioners who claim to be the owners of the agricultural land located in Gat No.330 (Survey no.160/A/12 and admeasuring 3 acres and 21 gunthas of village Vehergaon, Taluka Maval, Dist. Pune. We have perused the affidavit-in-reply filed by the Asst. Conservator of Forests as well as the additional affidavit-in-reply filed by the Deputy Conservator of Forests, Pune and the Deputy Superintending Archaeologist, Mini Circle, Mumbai on behalf of the respondent nos.4 and 5. The petitioners are aggrieved by the order dated 14/3/2005 passed by the Asst. Conservator of Forests, Pune Forest Division by exercising the powers available to him of summary eviction under

Section 53 read with Section 54 of the Maharashtra Land Revenue Code, 1966 ("the MLR Code" for short). The said order is issued undoubtedly by exercising the powers under the Maharashtra Private Forests (Acquisition) Act, 1975 (for short "the Private Forests Act"). It is alleged that the petitioners have encroached on the forest land by erecting structures / shops on a plot admeasuring 30 ft. x 15 ft. on the suit land. By the impugned order they were called upon to remove the said encroached structure within a specific period failing which they were warned that they would be attached and dealt with under Section 54 of the MLR Code.

2. Mr.Master, the learned counsel appearing for the respondent nos.4 and 5 has invited our attention to the affidavit-in-reply filed on their behalf and submitted that in the suit land there are in all three structures viz. (a) located near the booking counter and on the right side at a distance of about 16.50 mtrs. from the protected limits, (b) located mid way on the left side about 84.35 mtrs. from the protected limits and (c) located mid way on the right about 64 mtrs. from the protected limits. As per him the impugned notice is only in respect of

structures (a) and (b) and not (c). It is further submitted that Karla Caves have been declared as a protected monument under the Ancient Monuments Preservation Act, 1904 and a notification to the same effect was published way back on 14th March 1909. By placing reliance on the provisions of the Ancient Monuments and Archaeological Sites and Remains Rules, 1959 it has been contended by the respondent nos.4 and 5 that so long as the structures within a distance of 100 mtrs. from the protected limits are concerned, they are required to be demolished and the benefit of regularisation of the said structures cannot be considered unless they are located beyond a distance of 100 mtrs. from the protected limits.

3. Mr.Dani, the learned counsel for the petitioners has referred to the scheme of Sections 3, 6, 18 and 22A of the Private Forests Act and submitted that it is the Collector who has to decide the issues viz. (a) whether the petitioners' land is a private forest, (b) whether the subject sites amount to encroachment and (c) whether the owners could be given the benefit of Section 22A of the Private Forests Act. Section 6 of the said Act provides for the settlement of disputes and it states

that where any question arises as to whether or not any forest is a private forest, or whether or not any private forest or portion thereof has vested in the State Government or whether or not any dwelling house constructed in a forest stands acquired under this Act, the Collector shall decide the question, and the decision of the Collector shall, subject to the decision of the Tribunal in appeal which may be preferred to the Tribunal within sixty days from the date of such decision of the Collector, or the order of the State Government under Section 18, be final. Section 13 of the Private Forests Act provides for a remedy of appeal whereas Section 18 of the said Act provides for revision and thus any order that is to be passed by the Collector under Section 6 of the said Act gives further remedy to the aggrieved party either by way of an appeal or a revision as the case may be. We are, therefore, satisfied that it is for the Collector to hear the respective parties viz. the petitioners as well as the respondent nos.4 and 5 and pass an appropriate order under Section 6 of the Private Forests Act and the issues raised in this petition will be more efficaciously gone into by the Collector.

4. We, therefore, direct that if the petitioners file reply to the impugned notice within a period of four weeks from today to the Collector, Pune, the same shall be treated to be an application under Section 6 of the Private Forests Act and notices shall be issued to all the parties concerned including respondent nos.4 and 5 and after hearing the parties the Collector shall pass his order as per law, as expeditiously as possible and in any case within a period of six months from the presentation of the application. The parties to maintain status quo as at present till the Collector decides the application.

5. The petition is disposed off in terms of the above directions. Certified copy is expedited. Writ to go to the Collector, Pune forthwith.

(NARESH H. PATIL,J.) (B.H.MARLAPALLE